SC NO. 73-49

JUL 2 1973

MICHAEL RODAK, JR., CLERK

In the

Supreme Court

of the

United States of America

RAYMOND R. SULLIVAN and JAMES T. MARSH, on behalf of themselves and all others similarly situated,

Petitioners,

vs.

JOHN A. VOLPE, Secretary of Transportation, individually and in his official capacity; SHERIDAN E. FARIN, Regional Federal Highway Administration for Region 9 of the Federal Highway Administration, Department of Transportation, individually and in his official capacity; DONALD TRULL, Federal Division Engineer for the California Division of Region 9 of the Federal Highway Administration, Department of Transportation, individually and in his official capacity; CALIFORNIA DEPARTMENT OF PUBLIC WORKS; JAMES A. MOE, Director of California Department of Public Works, individually and in his official capacity; and ROBERT DATEL, Chief of the Division of Highways of the California Department of Public Works, individually and in his official capacity,

Respondents.

CITY OF SACRAMENTO, a municipal corporation,

Petitioner in Intervention,

GRANITE CONSTRUCTION COMPANY, a corporation, and A. TEICHERT & SON, INC., a corporation,

Respondents in Intervention

PETITION FOR WRIT OF CERTIORARI

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RAYMOND R. SULLIVAN and JAMES T. MARSH, on behalf of themselves and all others similarly situated,

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JOHN A. VOLPE, Secretary of Transportation, individually and in his official capacity; SHERIDAN E. FARIN, Regional Federal Highway Administration for Region 9 of the Federal Highway Administration, Department of Transportation, individually and in his official capacity; DONALD TRULL, Federal Division Engineer for the California Division of Region 9 of the Federal Highway Administration, Department of Transportation, individually and in his official capacity; CALIFORNIA DEPARTMENT OF PUBLIC WORKS; JAMES A. MOE, Director of California Department of Public Works, individually and in his official capacity; and ROBERT DATEL, Chief of the Division of Highways of the California Department of Public Works, individually and in his official capacity,

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a corporation, and
A. TEICHERT & SON, INC., a corporation,

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PETITION FOR WRIT OF CERTIORARI

REFERENCES

The unpublished judgment of Honorable Philip C. Wilkins, Judge of the United States District Court for the Eastern District of California, Civil No. S-2609, filed February 14, 1973, and the unpublished interlocutory order of Honorable Walter Ely and Honorable Ozell M. Trask, Circuit Judges of the United States Court of Appeal for the Ninth Circuit, Docket No. 73-1754, filed without opinion on May 7, 1973, respectively, which this petition seeks to have reviewed, are appendicized hereto, as Appendix "A".

GROUNDS

Jurisdiction is believed by petitioners to be conferred by 28 U.S.C. Section 1254(1), in pertinent part, as follows:

> Cases in the Court of Appeal may be reviewed by the Supreme Court by the following methods:
>
> (1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . . (28 U.S.C. Section 1254(1).)

QUESTIONS PRESENTED

1. Shall JOHN A. VOLPE, Secretary of Transportation, individually and in his official capacity, SHERIDAN E. FARIN, Regional Federal Highway Administration for Region 9 of the Federal Highway Administration, Department of Transportation, individually and in his official capacity, DONALD TRULL,

Federal Division Engineer for the California Division of Region 9 of the Federal Highway Administration, Department of Transportation, individually and in his official capacity, be required to complete an environmental impact statement in accordance with the National Environmental Policy Act of 1969, Section 102(c), or can laches be invoked to waive such compliance?

CONSTITUTIONAL PROVISIONS AND STATUTES

This case involves the National Environmental Policy Act of 1969, Section 102, set forth in Title 1, 42 U.S.C., Section 4332, as follows:

> The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall–
>
> (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;
>
> (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;
>
> (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality

of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize

international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by subchapter II of this chapter. (Pub.L.91-190, title I, Section 102, Jan. 1, 1970, 83 Stat. 853.)

This case further involves the Fifth and Ninth Amendments to the United States Constitution, as set forth in United States Codes Annotated, Constitution Amendments, as follows:

FIFTH AMENDMENT – No person shall . . . be deprived of . . . property without due process of law . . . (U.S.C.A. Const. Amend. 5.)

NINTH AMENDMENT – The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. (U.S.C.A. Const. Amend. 9.)

STATEMENT OF CASE

INTRODUCTION—

This is an ecology case. Suit was brought in federal court primarily to cause the federal and state defendants below to comply with federal and state laws which require these agencies to make studies of the environmental factors which may be adversely affected by proposed highway construction.

The gravamen of the matter is that the Honorable Philip C. Wilkins, Judge of the United States District Court for the Eastern District of California, ruled that it was not necessary for defendants to prepare an environmental impact statement, and the United States Court of Appeal for the Ninth Circuit by Circuit Judges Walter Ely and Ozell M. Trask, denied a motion to enjoin construction of the proposed highway pending appeal on the issue of preparation of an environmental impact statement.

FACTUAL BACKGROUND—

Petitioners are individuals who live in Sacramento, California and own land along the path of three interlocking sections of proposed Interstate 5, and whose objectives are the preservation of environmental and community values and the development of a sound transportation system in the Sacramento area. Respondents are the Secretary of the United States Department of Transportation, the Director of the California Department of Public Works and various other federal and state officials. Intervening respondents are Granite Construction Company and A. Teichert & Son, Inc. Petitioners filed suit on November 2, 1972, seeking a declaration that in the planning of the segment of Interstate Route 5 (I-5) scheduled to run through Sacramento County, California, respondents violated certain federal and California statutes, and are seeking an injunction restraining respondents from proceeding with the planning and construction of this part of I-5. The United States District Court for the Eastern District of California refused relief through judgment filed

February 14, 1973, and Notice of Appeal to the Court of Appeal for the Ninth Circuit was filed on March 30, 1973.

On May 7, 1973 the Court of Appeal denied, without comment or opinion, petitioners' motion for injunction pending appeal.

The instant case concerns three proposed, interlocking portions of the federal-interstate highway system Route 5, hereinafter referred to as the Freeway. The planned route of the Freeway extends for approximately 19.3 miles. The north end of the project ties into the recently completed depressed freeway through downtown Sacramento, California, near Broadway. The Freeway then runs southward along the Sacramento River levee until the river swings to the west near 43rd Avenue. From there, the project continues southward, terminating with the interchange at Pocket Road. This segment will hereinafter be referred to as Freeway Segment A. At the terminus of Freeway Segment A, the next portion begins, hereinafter referred to as Freeway Segment B. This segment runs in a generally southerly direction to a point on Beach Lake, where this segment ends, and the final segment begins. At Beach Lake Freeway Segment C begins, crossing floodwater areas, marshes, seven intermittent streams and one live stream until its terminus at Lambert Road. Within the three segments, the Freeway will contain alternate widths of 8 lanes with a 22-foot median, 6 lanes with a 54-foot wide median or, on occasion, a 60-foot wide median and 4 lanes with an 84-foot wide median. All three segments of the Freeway are situated within Sacramento County.

It is petitioners' concern that the Freeway will interfere with present life forms and will disrupt the established ecological spectrum of streams, marshlands and other areas along the route.

Petitioners seek issuance of a writ of certiorari to review the question whether respondents should be required to prepare an environmental impact study.

It is respectfully urged that there are special and important reasons for review, in that the instant case presents an important question whether NEPA is a paper tiger, merely, or whether reviewing courts are going to meet the responsibility of requiring various federal agencies to prepare environmental impact statements where federal highways might otherwise be completed without adequate considerations of, *inter alia*, air pollution, land use plans, disruption of municipal services, noise pollution, depletion of land and trees, aesthetics, and the ecological spectrum of streams and marshlands and especially in the instant case, wildlife endangerment and disruption in the Stone Lakes area.

BASIS OF ORIGINAL FEDERAL JURISDICTION

Basis of federal jurisdiction in the court of first instance, the United States District Court for the Eastern District of California, as duly acknowledged and invoked by that court, was on several grounds:

> 28 U.S.C. Section 1343(3) and (4); 28 U.S.C. Section 1361; 28 U.S.C. Section 1331(a); and Section 10 of the Administrative Procedure Act, 5 U.S.C. Sections 701-706. (Memorandum Re Proposed Decision, p. 3, Honorable Philip C. Wilkins, United States District Judge, filed January 29, 1973.)

ARGUMENT

I

THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT SO FAR SANCTIONED A DEPARTURE BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDING, AS TO CALL FOR THE EXERCISE OF THIS COURTS' POWER OF SUPERVISION.

The Honorable Philip C. Wilkins, Judge of the United States District Court for the Eastern District of California, by Judgment on February 14, 1973 ordered, adjudged and decreed, that "the application of plaintiffs and plaintiff in intervention for an order requiring defendants to prepare, file and circulate an environmental impact statement concerning the construction of those portions of Interstate 5 involved in this action be, and the same is, denied."

The Honorable Walter Ely and Ozell M. Trask, Circuit Judges of the United States Court of Appeal for the Ninth Circuit, by interlockatory order on May 7, 1973, implicitly sanctioned the District Court's judgment, in ordering "The 'Motion of Appellants for Injunction Pending Appeal, etc.', filed herein on April 26, 1973, is denied."

The respective judgment and interlocutory order constitute such a departure from the accepted and usual course of judicial proceedings, as to call for the exercise of this courts' power of supervision, in that the function of the respective courts in the instant case is to insure that the requirements of the federally legislated National Environmental Policy Act of 1969, 42 U.S.C. Section 4332 (NEPA), are met.

It is not the function of the respective courts to determine case-by-case whether in the instance of any particular agency the NEPA requirements shall be waived.

The better reasoned federal authority indicates that the function of courts before whom the issue arises is limited to a determination of whether the defendants have complied with all of the procedural requirements of NEPA. *(Conservation Council of North Carolina* v. *Froehlke*, 340 F.Supp. 222 (M.D.N.C. 1972); *EDF* v. *Hardin*, 325 F.Supp. 1401 (D.C.Cir.1971); *EDF v. Corps of Engineers*, 325 F.Supp. 749 (E.D. Ark. 1971).)

The purpose of NEPA is to create a council which can review national policies and environmental problems. (U.S. Code and Administrative News, 1969, vol. 2, p. 2759.) To achieve this purpose, all federal agencies are required by 42 U.S.C. Section 4332 to (1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment; and (2) include a detailed statement for all major federal actions which significantly affect the environment. The detailed statement must contain the environmental impact of the proposed action, any adverse environmental effects and any alternatives to the proposed action.

Petitioners respectfully urge that the federal respondents must file and consider an environmental impact statement in accordance with Section 102(c) of the National Environmental Policy Act of 1969 (42 U.S.C.

Section 4332(c).) before taking further steps toward the construction of Interstate 5.

Section 102(c) of the Act, as set forth in 42 U.S.C.A. Section 4332 (2) (c) (i), reads as follows:

> The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—
>
> (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;
>
> (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;
>
> (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by Section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by subchapter II of this chapter. (Pub.L.91-190, title I Section 102, Jan. 1, 1970, 83 Stat. 853.)

It is indisputed that prior to the filing of this suit no Section 102(c) statement had been prepared for the project in question. (Finding of Fact, p. 16.) It is also uncontested that this four-to-eight lane highway is a major Federal action significantly affecting the quality of the human environment. (Complaint, p. 2.)

The statement that all agencies of the Federal Government *shall* include a detailed statement by the responsible official on the environmental impact of the proposed action, is mandatory.

It is not a requirement which the courts can waive. As stated in this regard in a recent federal case, "shall" is the language of command in a statute. *(Boyden* v. *Commission of Patents*, 441 F.2d 1041(C.A.D.C. 1971) cert.den. 404 U.S., 842, 92 S.Ct. 139, 30 L.Ed.2d 77(1971).)

The reviewing court held likewise in *Brown* v. *Hecht Co.*, 137 F.2d 689, 78 U.S. App. D.C. 98, reversed 321 U.S. 321, 64 S.Ct. 587, L.Ed. 754 (1944) [The word "shall" in a statute is normally the language of command.]

It has been variously stated that in a statute employing the term "shall", which is sought to be invoked by one who stands in such relation to the cause that he can demand it, the word means "must". *(Ex parte Jordan*, 94 U.S. 248, 24 L.Ed. 123 (1887).)

When a provision in a statute is intended for the protection of citizens and to prevent sacrifice of his property and by a disregard of which his rights might be injuriously affected, it is not directory, but mandatory. *(Brown* v. *Glick Bros. Lumber Co.*, 52 F.Supp. 913, reversed 146 F.2d 566, cert.den. 325 U.S. 877, 65 S.Ct.

1554, 89 L.Ed. 1994 (1944), reh.den 326 U.S. 804, 66 S.Ct. 12, 90 L.Ed. 490 (1945).)

Where an Appeals Court abuses its discretion in applying a statute, certiorari may be granted. (United States Supreme Court Rule 19. See also *United States* v. *Carrick*, 298 U.S. 435, 56 S.Ct. 829 80 L.Ed. 1263 (1936) [On appeal from refusal of interlocutory injunction the inquiry of the Supreme Court is limited to the question whether the lower court abused its discretion].)

II

THE DECISIONS OF THE VARIOUS UNITED STATES COURTS OF APPEAL ON THE "RETROACTIVITY" OF NEPA, AND ON THE RELATED QUESTION OF LACHES, ARE IN CONFLICT.

In the instant case, the United States District Court asserted laches barred plaintiffs below, and this holding was implicitly sanctioned by the Ninth Circuit's interlocutory order denying appellant's motion to maintain the status quo pending review of the issue. There are appeals cases supporting this view. However, there are other appeals cases holding that laches is not applicable under circumstances as in the instant case, and that to apply NEPA to ongoing projects is not a "retroactive" application.

Respondents and defendants below, claim that this suit should be barred by laches, in that all of the relevant statutes were in effect by January 1, 1970, and that petitioners did not file suit until November 2, 1972, after some construction had already occurred. (Findings of Fact, p. 13.)

Sacramento I-5, however, was and is a project ongoing after the effective date of the act.

As recently as April 25, 1972, during the pendency of Appellants' Motion, the United States Court of Appeal for the Ninth Circuit was apprised that parts of the project were only at the bid opening stage, with over $5,000,000.00 in construction contracts on one of the three subject proposed interlocking portions of Federal Interstate System Route 5, namely Segment "B", having not then yet been awarded. *(Affidavit* [Ninth Circuit, Rule 6(g)] of Richard Keith Corbin, attorney for appellants, dated April 27, 1973.)

As was reasoned by the reviewing court in *Arlington Coalition on Transportation* v. *Volpe*, 458 F.2d 1323, 1331(C.A.Va. 1972), in addressing itself to the twofold issue of retroactivity and laches, doubtless Congress did not intend that all projects ongoing at the effective date of the Act should be subject to the requirements of NEPA. At some stage, federal action may be so "complete" that applying the Act could be considered retroactive. But in the instant case, the United States District Court for the Eastern District of California had decided an environmental impact statement was not necessary on the ground of laches, although some of the project had not even reached the bid stage. It is inescapable that the Congressional command that the Act be complied with "to the fullest extent possible" means that an ongoing project was intended to be subject to Section 102 until it reached the stage of progress wherein the costs of altering or abandoning the project could so definitely outweigh whatever benefits that might

accrue therefrom that it might no longer be "possible" to change the project.

As stated in the *Arlington* case, *supra*, in this regard,

> "We must stress as forcefully as possible that this language does not provide an escape hatch for foot-dragging agencies; it does not make NEPA's procedural requirements somehow "discretionary". Congress did not intend the Act to be such a paper tiger. Indeed, the requirement of environmental consideration 'to the fullest extent possible' sets a high standard for the agencies, a standard which must be rigorously enforced by the reviewing courts." *(Id.*, 458 F.2d at p. 1331.)

Supporting this view, see also *Calvert Cliffs' Coordinating Committee, Inc.*, v. *United States Atomic Energy Commission*, 449 F.2d 1109(D.C. Cir. 1971); *Ely* v. *Velde*, 451 F.2d 1130(4th Cir. 1971.)

The cases refusing to apply Section 102(c) "retroactively" to projects ongoing at the effective date of the Act, though not appearing to petitioners inconsistent with the principle because they were based on a similar factual consideration of the stage of the project, do exist, and to the extent they are contra to the above cases, and were relied on by the lower courts in the instant case, they are commended to this courts' consideration, as follows:

Pennsylvania Environmental Council, Inc. v. *Bartlett*, 454 F.2d 613 (3rd Cir. 1971); *Triangle Improvement Council* v. *Ritchie*, 429 F.2d 423 (4th Circ. 1970) [per curiam decision], cert. dismissed 402 U.S. 497, 91 S.Ct. 1650, 29 L.Ed. 2d 61 (1971); *Latham* v. *Volpe*, 455 F. 2d 1111(9th Cir. 1971).

Where the decisions of Appeals Courts are in conflict

certiorari may be granted. (United States Supreme Court Rule 19.) Certiorari was granted to consider issues of importance in the administration and scope of federal laws in the following cases where courts of appeal differed in their decisions:

Donaldson v. *United States*, 400 U.S. 517, 91 S.Ct. 534, 27 L.Ed. 2d 580(1971); *Bingles* v. *Johnson*, 391 U.S. 741, 89 S.Ct. 1439, 22 L.Ed. 2d 695(1969); *United States* v. *Zacks*, 375 U.S. 59, 84 S.Ct. 178, 11 L.Ed. 2d 128(1963).

CONCLUSION

Based on the reasons stated herein and the authority cited in support thereof, in this ecology cause petitioners pray this Court declare that the respondents' actions in failing to comply with NEPA violate the rights of the petitioners and all the people of the United States, not only if this generation but of those generations yet unborn, guaranteed under the Ninth Amendment of the Constitution of the United States and protected by the due process clause of the Fifth Amendment of the Constitution of the United States.

Petitioners further pray that the judgment of the United States District Court for the Eastern District of California, and the interlocutory Order of the United States Court of Appeal for the Ninth Circuit be reversed, and the cause be remanded to the District Court with directions to compel federal respondents to prepare, file and circulate an environmental impact statement in regard to the subject three interlocking portions of proposed federal highway I-5.

Respectfully submitted,

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Attorneys for Petitioners

APPENDIX "A"

1. Judgment of Honorable Philip C. Wilkins, Judge of the United States District Court for the Eastern District of California, Civil No. S-2609, filed February 14, 1973. (Attached, pp. 16-17.)

2. Interlocutory Order of Honorable Walter Ely and Honorable Ozell M. Trask, Circuit Judges of the United States Court of Appeal for the Ninth Circuit, Docket No. 73-1754, filed May 7, 1973. (Attached, p. 18.)

APPENDIX "A" (1)

LODGED

JAN 29 1973

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY_____ DEPUTY

FILED

FEB 14 1973

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY_____ Deputy Clerk

24

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND R. SULLIVAN, et al., Plaintiffs, v. JOHN A. VOLPE, et al., Defendants.	Civil No. S-2609
CITY OF SACRAMENTO, a municipal corporation, Plaintiff in Intervention,	JUDGMENT
GRANITE CONSTRUCTION COMPANY, a corporation, and A. TEICHERT & SON, INC., a corporation, Defendants in Intervention.	

This Court having heretofore made and entered its Findings of Fact and Conclusions of Law, and GOOD CAUSE APPEARING THEREFOR:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the application of plaintiffs for preliminary and permanent injunctive relief be, and it is, denied;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the application of plaintiffs and plaintiff in intervention for an order requiring defendants to prepare, file and circulate an

environmental impact statement concerning the construction of those portions of Interstate 5 involved in this action be, and the same is, denied;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the federal defendants, the state defendants, and the defendants in intervention have and take judgment against plaintiffs and plaintiff in intervention, and that plaintiffs and plaintiff in intervention take nothing by reason of their complaints herein.

Dated this 14 day of February, 1973.

Charles C. Wilkins
UNITED STATES DISTRICT JUDGE

ENTERED IN CIVIL DOCKET FEB 14 1973 19[illegible]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND R. SULLIVAN, et al.,

Plaintiffs-Appellants,

v.

JOHN A. VOLPE, et al.,

Defendants-Respondents.

CITY OF SACRAMENTO, a municipal corporation,

Plaintiff in Intervention,

GRANITE CONSTRUCTION COMPANY, a corporation, and A. TEICHERT & SON, INC., a corporation,

Defendants in Intervention.

No. 73-1754

(Dist. Ct. - 52409)

Docketed

O R D E R

FILED

MAY 7 1973

DENNIS R. MATHEWS, CLERK
U. S. COURT OF APPEALS

Before: ELY and TRASK, Circuit Judges.

The "Motion of Appellants for Injunction Pending Appeal" etc., filed herein on April 26, 1973, is denied.

United States Circuit Judges

APPENDIX "A" (2)

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the county of Sacramento.

I am over the age of eighteen years and not a party to the within above entitled action. My business address is 2629 Fifth Street, P.O. Box 551, Sacramento, California 95803.

On June 29, 1973, I served the within Petition for Writ of Certiorari of this Cause to the Supreme Court of the United States of America on counsel for the respective parties in said action, by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid, in the United States post office mail box at Sacramento, California addressed as follows:

1. Office of Solicitor General
   Mr. Neil T. Proto, Asst. Attorney General, U.S. Dept. of Justice Land and Natural Resources Division
   Washington D.C. 20530
   (Sent Air Mail postage prepaid)

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7. Mr. James P. Jackson, City Atty., Mr. Richard H. Hyde, Deputy Attorney,
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   810 - 10th Street, Suite 201
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I, Beverly Bruso, certify under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 1973 at Sacramento, California.

Beverly Bruso

Beverly Bruso